

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक

सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक
तथा आदेश क्रमांक

हस्ताक्षर सहित आदेश

कार्यालयीन मामलों में डिप्टी रजिस्ट्रार
के अंतिम आदेश**Criminal Appeal No.359/2001****APPELLANT**

Sonaram S/o Bhagwan Singh, Age 25 years, Occupation Labour work, R/o Gram Bahnpathra, Kota Kuridih, Thana Arjuni, Tahsil and District Dhamtari (C.G.)

Versus**RESPONDENT**

State of Chhattisgarh, through Police Station Arjuni, District Dhamtari (C.G.)

CRIMINAL APPEAL u/s 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

D.B.: **HON'BLE SHRI L.C BHADOO, J. & HON'BLE SHRI SUNIL KUMAR SINHA, J.**

ORAL JUDGMENT
(17.10.2007)**L.C. Bhadoo, J:-**

Shri Ravindra Agrawal, Counsel for the appellant.

Shri Ashish Shukla, Govt. Advocate for the State.

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 08.03.2001 passed by the Additional Sessions Judge, Dhamtari, District Dhamtari (C.G.) in S.T. No.253/2000, whereby the learned Additional Sessions Judge after holding the accused/appellant guilty of the offence punishable under Sections 307 & 302 of the IPC, sentenced him to undergo



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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	imprisonment for 7 years and life imprisonment. Both the sentences were directed to run concurrently. It is an admitted fact that accused is son-in-law of the deceased. Case of the prosecution in brief is that on the day of the incident, the accused/appellant went to his in-laws house and abused them saying that they are not sending his children to his house, at that time; he was carrying knife in his hand. The accused/appellant attacked his mother-in-law - Punni Bai with a knife on her back. Seeing this, his father-in-law - Johar Lal @ Veer Singh (since deceased) came there and intervened. The accused in the first instance pushed him, as a result of which he fell down. The accused attacked him with the knife on his left shoulder. On hearing cries of Punni Bai, accused ran away. There was profuse bleeding from the injury, as a result of which, Johar Lal @ Veer Singh died on the spot. The matter was reported by Ram Sunder in the Police Station - Arjuni under Ex.-P/7. After registering the case, the Investigating Officer left for the scene of occurrence. The accused/appellant - Johar Lal @ Veer Singh, while in police custody gave memorandum Ex.-P/3, in pursuance of that he got recovered the knife - weapon of offence. Site Plan (Ex-P/5) was prepared by Halka Patwari. After giving notices (Ex.-P/9) to the Panchas, he prepared inquest (Ex.-P/10) on the body of the deceased- Johar Lal @	



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	Veer Singh. Body was sent for postmortem examination to the Government Hospital, Dhamtari under Ex.P/11, where Dr. R.H. Mishra (PW-9) conducted the postmortem. He opined that the cause of death was haemorrhage, shock due to the cut injury over the sub-clavian artery and the death was homicidal. He prepared report (Ex-P/17). Punni Bai (PW-1) was sent for medical examination, she was examined by the same Dr. R.H. Mishra and he gave report (Ex.P/18). The Doctor noticed that there was an abrasion in the size of 1" x ½" over right side of the back near right scapula and injury was caused by hard and blunt object. The weapon of offence i.e. knife was sent for examination under Ex.-P/13 to the Doctor, after inspection of the knife under Ex.P/13 A, he opined that the injury found on the body of Johar Lal @ Veer Singh can be caused by the said weapon. After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Dhamtari, who in turn committed the case to the Sessions Judge, Raipur, from where learned Additional Sessions Judge received the case on transfer for trial. The prosecution in order to establish charge against accused/appellant examined 9 witnesses. The statement of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the material appearing against him in the prosecution evidence and	



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	stated that he is innocent and has been falsely implicated in the crime. The learned Additional Sessions Judge after hearing the counsel for the respective parties convicted and sentenced the accused/appellant as aforementioned. We have heard Shri Ravindra Agrawal, Counsel for the appellant and Shri Ashish Shukla, Government Advocate for the State. Shri Agrawal has not disputed the homicidal death of Johar Lal @ Veer Singh. Moreover PW-1 - Punni Bai, wife of the deceased, who witnessed the incident has categorically stated that on the fateful day, accused/appellant came to her house and attacked her and when her husband (deceased) intervened, the accused/appellant attacked him also with the knife, as a result of which, her husband - Johar Lal @ Veer Singh sustained the injury and died on the spot. The above ocular evidence is corroborated by the medical of evidence of Dr. R.H. Mishra (PW-9) , who has stated that on 20th May 2000, he conducted the postmortem on the body of Joharlal @ Veer Singh and there was an incised wound in the size of 1" x 3/4" x 3" on the left shoulder near the neck, death was homicidal in nature. Therefore, in view of the above ocular and medical evidence, it is established that the death of Johar Lal @ Veer Singh was homicidal in nature.	



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	5	As far as complicity of the accused in crime in question is concerned, in this case, there is only one eye-witness namely Punni Bai (PW-1), who is none else than mother-in-law of the accused/appellant. She has categorically stated that on the fateful day, at about 6 p.m., she along with her husband was sitting in the courtyard of their house, at that time, accused/appellant came there holding a knife in his hand and after abusing her, attacked her with the knife on the back. Seeing this, her husband came and intervened, accused attacked him also with the knife, as a result of which, he sustained the injury and died spontaneously. In cross-examination of this witness, the defence has not been able to elicit any circumstance, which discredits the evidence of this witness. The evidence of this witness stands corroborated in material particulars by the medical evidence, because, Dr. R.H. Mishra (PW-9), who conducted the postmortem on the body of the deceased - Johar Lal @ Veer Singh, has stated that there was an incised wound on the left shoulder near the neck and as a result of profuse bleeding from that injury, Johar Lal @ Veer Singh died on the spot. Moreover, knife in question was recovered at the instance of the accused/appellant, the same was sent for examination to the Doctor and after examination of the knife, he gave report (Ex.-P/13A). The Doctor has opined that the injury found on the shoulder of the deceased can be caused by the same



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	knife. Therefore, from the above ocular, medical and circumstantial evidence, complicity of the accused in crime in question is established beyond reasonable doubt. Shri Ravindra Agrawal argued that there was some dispute between the accused and his wife, due to which, his in-laws were not sending the wife with him. Thereafter, the matter was compromised and the wife was sent to the house of the accused, but they were not sending the children to his house, therefore, on the fateful day, the accused came to their house, abused Punni Bai and Johar Lal @ Veer Singh (deceased) and in that process, when Johar Lal came on the spot, without any intention, accused once attacked the deceased on the left shoulder near the neck. However, the knife landed on the sub-clavian artery, as a result of which, artery was cut, there was profuse bleeding from the said injury, and Johar Lal @ Veer Singh died on the spot. He placed reliance on the judgment of the Apex Court in the matter of State of U.P. vs. Indrajeet @ Sukhatha, S.C. 2000 SAR (Criminal) 800 and argued that offence against the accused does not extend beyond Section 304 -II of the IPC. On the other hand, learned counsel for the State supported the judgment of the trial Court. Having heard learned counsel for the parties, in order to appreciate the arguments advanced by learned counsel for	



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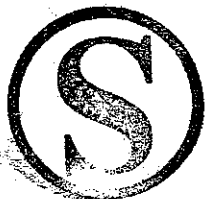
आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	the appellant, we have perused the evidence of Punni Bai (PW-1- wife of the deceased) . Punni Bai (PW-1) has stated that on the fateful day, she alongwith her husband was sitting in their house, at that time, the accused came there with a knife and attacked her. When her husband came to intervene, accused attacked him also with the knife, which landed on his neck and he died. Case of the prosecution as disclosed is that the deceased - father-in-law and injured - mother-in-law were not sending the children of the accused to his house, therefore, the accused came to their house and abused them saying that why they were not sending his children to his house and in the first instance, he attacked Punni Bai (PW-1), as a result of which, she sustained one abrasion injury. Her medical report is Ex. P/18. In the meantime, Johar Lal @ Veer Singh, father-in-law of the accused, came there and when he intervened, the accused, without any intention all of a sudden in a heat of passion attacked him with the knife, which landed on the sub-clavian artery, as a result of which, the artery was cut and due to profuse bleeding from it, he died on the spot. In the matter of <u>State of U.P. vs. Indrajeet @ Sukhatha (Supra)</u>, the accused, who was a carpenter came to the spot with <u>Rukhani</u> (an implement normally used by the Carpenters), attacked the deceased with the same on the	

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neck and the deceased died on account of that injury. The Court held that the accused came on the spot with Rukhami. If the accused had the intention to kill the deceased, he could have used a regular weapon, therefore, the accused did not had any intention to kill the accused and only one incised wound inflicted was grievous in nature. The Court held that the offence of the accused was not extending beyond Section 304 Part-II of the IPC. In the present case also, there was no animosity between the father-in-law (deceased) and accused. On a petty matter when children of accused were not being sent to his house by father-in-law and mother-in-law, he came to their house in an angry mood, in the first instance; he abused and attacked his mother-in-law - Purni Bai (PW-1), who sustained an abrasion injury on her back side. However, in the meantime, when the deceased came and intervened, he turned towards him and attacked him with the knife, which landed on the left shoulder, as a result of which, artery was cut, there was profuse bleeding from it and he died. From the above fact, it cannot be held that the accused attacked the deceased with an intention to cause his death. However, looking to the nature of wound and manner in which, he attacked, it can safely be inferred that the accused had the knowledge that he may likely to cause the death of his father-in-law, therefore, the offence punishable under		

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Shyna	9 Section 304 Part-II was made out against the accused/appellant. For the foregoing reasons, the conviction under Section 302 of the IPC of the accused cannot be sustained. Similarly, the offence under Section 307 of the IPC for attacking Punni Bai also cannot be sustained, because, as per the injury report, there was one injury i.e. abrasion on the right side of scapula and as per the prosecution case, he attacked her only once, as per medical report, injury was simple in nature, therefore, for attacking Punni Bai as per the record, offence under Section 324 of the IPC is made out. In the result, the appeal partly succeeds. The conviction and sentence imposed upon the accused/appellant for commission of the offence under Section 302 & 307 of the IPC are set aside. Instead thereof, he is convicted under Sections 304 Part-II and 324 of the IPC and sentenced to undergo R.I. for 10 years and 3 years respectively. Both the sentences shall run concurrently. The accused shall be entitled for set off for the detention period against the sentence imposed upon him. Sd/- L.C.BHADOO Judge	Sd/- Sunil Kumar Sinha Judge